

Natalie M. Cox

Honorable Natalie M. Cox
United States Bankruptcy Judge



Entered on Docket
July 03, 2023

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re

MUSCLEPHARM CORPORATION,

Debtor.

Case No. BK-22-14422-NMC
Chapter 11

**ORDER DENYING EMERGENCY MOTION
TO ENFORCE INTERCREDITOR AND
SUBORDINATION AGREEMENT UNDER
SECTION 510(a) OF THE BANKRUPTCY
CODE**

Date: June 23, 2023

Time: 11:30 a.m.

On May 15, 2023, Empery Tax Efficient, LP ("**Empery**"), filed the *Emergency Motion to Enforce Intercreditor and Subordination Agreement Under Section 510(a) of the Bankruptcy Code* [ECF No. 506] (the "**ICA Motion**"), the *Declaration of Teresa M. Pilatowicz in Support of Emergency Motion to Enforce Intercreditor and Subordination Agreement Under Section*

1 510(a) of the Bankruptcy Code [ECF No. 507], the *Declaration of Ryan Lane in Support of*
 2 *Emergency Motion to Enforce Intercreditor and Subordination Agreement Under Section*
 3 *510(a) of the Bankruptcy Code* [ECF No. 508], and the *Ex Parte Application for Order*
 4 *Shortening Time to Hear Emergency Motion to Enforce Intercreditor and Subordination*
 5 *Agreement Under Section 510(a) of the Bankruptcy Code* [ECF No. 509]. On May 31, 2023,
 6 the Debtor filed *Debtor's Joinder to Emergency Motion to Enforce Intercreditor and*
 7 *Subordination Agreement Under Section 510(a) of the Bankruptcy Code* [ECF. No. 564].

8 On June 1, 2023, Ryan Drexler (“**Drexler**”) filed an *Objection to Emergency Motion to*
 9 *Enforce Intercreditor and Subordination Agreement Under Section 510(a) of the Bankruptcy*
 10 *Code* [ECF No. 566] (the “**Objection**”). On June 8, 2023, Empery filed *Empery Tax Efficient,*
 11 *LP's Reply to Objection to Emergency Intercreditor and Subordination Agreement Under*
 12 *Section 510(a) of the Bankruptcy Code* [ECF No. 582]. On June 14, 2023, Drexler filed an
 13 *Amended Declaration of Michael P. Richman* [ECF No. 595] in support of the Objection.

14 The Court held hearings on the ICA Motion on June 15 and 22, 2023. The Court made
 15 findings of fact and conclusions of law in an oral ruling on the ICA Motion on June 23, 2023.
 16 The Court having considered the ICA Motion, the other pleadings filed in relation to the
 17 motion, and the matters presented at the hearings, and based upon the record before the
 18 Bankruptcy Court:

19 **IT IS HEREBY ORDERED** that the findings of fact and conclusions of law made by
 20 the Court in its oral ruling on June 23, 2023 are incorporated into this Order by this reference
 21 pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable in this contested
 22 matter pursuant to Rules 9014(a) and (c) and 7052 of the Federal Rules of Bankruptcy Procedure.

23 **IT IS FURTHER ORDERED** that Empery's ICA Motion is **DENIED**.

24 **IT IS FURTHER ORDERED** that the Court's prior stay of discovery related to
 25 Drexler's *Motion for the Appointment of a Chapter 11 Trustee* [ECF No. 447] (“**Trustee**
 26 **Motion**”) is lifted and the parties shall meet and confer about the schedule for discovery,
 27 briefing, related procedural matters and hearings on (a) the Trustee Motion, and (b) other pending
 28

1 matters. No later than June 30, 2023, the parties shall file a joint status report (“**June 30 Status**
2 **Report**”) setting forth any agreements on the foregoing matters, and the matters to which the
3 parties have not agreed. The Court shall promptly resolve any disputed matters.

4 **IT IS SO ORDERED.**

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7 Respectfully submitted this 26th day of June 2023.

8 **STEINHILBER SWANSON LLP**

9 /s/ Michael P. Richman

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LR 9021 CERTIFICATION

In accordance with LR 9021, the attorney submitting this document hereby certifies as follows (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all attorneys who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Samuel A. Schwartz, Esq. **Approved**
Counsel for the Debtor

Gregory E. Garman, Esq. **Approved**
Counsel for Empery Tax Efficient, LP

Jeffrey A. Sternklar, Esq. **Approved**
*Counsel for White Winston Select
Asset Funds, LLC*

John D. Fiero, Esq. **Approved**
*Counsel to the Official Committee of
Unsecured Creditors*

Jared A. Day, Esq. **Approved**
Counsel for the Office of the U.S. Trustee

Valerie Y. Zaidenberg, Esq. **Waived Signature Via
Email**
Counsel for ThermoLife International, LLC

☐ I certify that this case is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of this order.

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